



WEB COPY



Arb. O.P(Com.Div).No.161 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

Arb. O.P(Com.Div).No.161 of 2024

M/s.R.K.Ganapathi Chettiar
Rep. by its Partner Mr.N.S.Krishna Raj,
138, Muthur Road,
Kangayam 630701,
Tamil Nadu.

...Petitioner

Vs.

M/s.Sharp Mindz Marketing Pvt. Ltd.,
118, Swastik Disa Corporate Park,
Opp. Shreyas Cinema,
L.B.S.Marg Ghatkoper,
(W) Mumbai-400 086.

.... Respondent

Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to go into the dispute between the petitioner and the respondent in respect of the Memorandum of Understanding (MOU) dated 10.09.2021.

For Petitioner : Ms.M.Advika

For Respondent : S/R, No appearance



WEB COPY

ORDER

This Arbitration Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the Act') to appoint an Arbitrator to resolve the dispute between the petitioner and the respondent in respect of the Memorandum of Understanding (in short 'MOU') dated 10.09.2021.

2. The learned counsel appearing for the petitioner would submit that, the present dispute has arisen out of the 'MOU' dated 10.09.2021. The petitioner company is a leading manufacturer and exporter of quality butter, ghee and dairy products. The petitioner-company has engaged the respondent-company to promote their business all over the country and paid a sum of Rs.8,00,000/- towards remuneration of business promoter. However, the respondent-company has failed to take any initiative to market the products of the petitioner in terms of above said MOU dated 10.09.2021. Therefore, on 05.03.2024 the petitioner issued a notice to the respondent under Section 21 of the Act, calling upon the respondent to give their consent for appointment of a sole Arbitrator to resolve the dispute between them. After the receipt of said notice, the respondent-company have not come forward to nominate the



WEB COPY

Arbitrator. The learned counsel submitted that, the parties are not in a position to nominate a neutral Arbitrator. Therefore, the petitioner-company is constrained to approach this Court by way of filing the present Arbitration Original Petition seeking for the aforesaid prayer.

3. Despite service of notice on the respondent and its name being printed in the causelist, there is no representation on behalf of the respondent.

4. Considering the submissions made by the learned counsel for the petitioner and in view of the fact, that the present dispute has arisen out of above said MOU dated 10.09.2021, with regard to the failure on the part of the respondent for not promoting the products of the petitioner after the receipt of sum of Rs.8,00,000/- from the petitioner, and the same is arbitrable as per Clause 15 of the said MOU, which reads as under :

“15. Settlement of Disputes:

1. In the event of any dispute or difference arising between the parties relating to these presents or the rights or obligations of the parties hereto in relation to transactions covered by this agreement or arising out of or in relation to these presents, the parties shall endeavor to resolve their disputes amicably.



WEB COPY



Arb. O.P(Com.Div).No.161 of 2024

2. In the event of the disputes and difference not being resolved amicably, the above disputes and differences shall be referred to arbitration by an Arbitrator appointed by the Supplier/mutually.

3. The arbitration shall be conducted in accordance with the Indian Arbitration and Conciliation Act, 1996 and rules framed there under and as amended from time to time. The arbitration proceedings shall be conducted in English and the venue of Arbitration shall be at Chennai.

4. No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity by statute or otherwise, or any other remedy given or now or hereafter existing at law, in equity, by statute, or otherwise, except as stated to the contrary of this Agreement. The election of any one or more of such remedies by any of the parties hereto shall not constitute a waiver by such party of the right to pursue any other available remedy.

5. This Agreement shall be construed in accordance with the law by India and shall be subject to the exclusive jurisdiction of the Courts at Chennai.”



5. In view of the above, this Court is inclined to appoint an Arbitrator to adjudicate the dispute between the parties.

6. Accordingly, this Court feels it appropriate to issue the following directions:-

- (a) **Mr.G.K.Muthukumaar, Advocate, High Court of Madras,** Possessing Mobile No.9791088121, Residing at "Erode House", New No.66, 3rd Main Road, Gandhi Nagar, Adayar, Chennai 600 020, is appointed as a Sole Arbitrator to enter upon reference and adjudicate the disputes between the parties, arising out of the above said MOU.
- (b) The Arbitrator shall initiate arbitration proceedings and after issuing notice to the parties concerned and upon hearing them, pass an award, on merits and in accordance with law and uninfluenced by any of the observations made in this order, within a period of six months from the date of receipt of a copy of this order.
- (c) The Arbitrator shall be paid fees and other incidental charges, as per the Schedule IV of the Act and the same shall be borne by both the parties equally. In the event of non-appearance of the Respondent, the Petitioner shall bear the entire remuneration and



WEB COPY



Arb. O.P(Com.Div).No.161 of 2024

other expenses and thereafter, the Petitioner is at liberty to recover the same directly from the Respondent.

7. In the result, the Arbitration Original petition is allowed with the aforesaid directions. No costs.

25.07.2024

jd

Note: Issue order copy on 08.08.2024.



WEB COPY



Arb. O.P(Com.Div).No.161 of 2024

Krishnan Ramasamy,J.,
jd

Arb.O.P(Com.Div).No.161 of 2024

25.07.2024